

FIRST REGULAR SESSION

SENATE BILL NO. 626

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time February 28, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2295S.01I

AN ACT

To repeal sections 172.360, 174.130, 178.635, and 178.780, RSMo, and to enact in lieu thereof ten new sections relating to illegal immigration.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 172.360, 174.130, 178.635, and 178.780, RSMo, are
2 repealed and ten new sections enacted in lieu thereof, to be known as sections
3 28.809, 28.812, 28.815, 28.817, 172.360, 174.130, 175.025, 178.635, 178.780, and
4 178.786, to read as follows:

**28.809. As used in sections 28.800 to 28.817, the following terms
2 shall have the following meanings:**

3 **(1) "Basic pilot program", the electronic verification of work
4 authorization program of the Illegal Immigration Reform and
5 Immigrant Responsibility Act of 1996, P.L. 104-208, Division C, Section
6 403(a); 8 U.S.C. 1324a, and operated by the United States Department
7 of Homeland Security or its successor program;**

8 **(2) "Business entity", any person or group of persons performing
9 or engaging in any activity, enterprise, profession, or occupation for
10 gain, benefit, advantage, or livelihood,
11 whether for profit or not for profit. The term "business entity" shall
12 include but not be limited to self-employed individuals, partnerships,
13 corporations, contractors, and subcontractors. The term "business
14 entity" shall also include any business entity that possesses a business
15 permit, license, or tax certificate issued by the state, any business
16 entity that is exempt by law from obtaining such a business permit, and
17 any business entity that is operating unlawfully without such a
18 business permit;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (3) "Contractor", a person, employer, or business entity that
20 enters into an agreement to perform any service or work, or provide a
21 certain product in exchange for valuable consideration. This definition
22 shall include but not be limited to a subcontractor, independent
23 contractor, contract employee, or a recruiting or staffing entity;

24 (4) "Division", the division of immigration compliance under the
25 office of the secretary of state;

26 (5) "Employee", any person performing or applying for work or
27 service, of any kind or character, for hire;

28 (6) "Employer", any person employing or seeking to employ any
29 person for hire. Where there are two or more putative employers, any
30 person or entity taking a business tax deduction for the employee in
31 question shall be considered an employer of that person for purposes
32 of sections 28.800 to 28.817;

33 (7) "Employment", the act of employing or state of being
34 employed, engaged, or hired;

35 (8) "Illegal alien", an alien who is not lawfully present in the
36 United States, according to the terms of 8 U.S.C. 1101, et seq. The state
37 of Missouri shall not conclude that a person is an illegal alien unless
38 and until an authorized representative of the state of Missouri has
39 verified with the federal government, under 8 U.S.C. 1373(c), that the
40 person is an alien who is not lawfully present in the United States;

41 (9) "Unauthorized alien", an alien who does not have the legal
42 right or authorization under federal law to work in the United States,
43 as defined by 8 U.S.C. 1324a(h)(3);

44 (10) "Work", any job, task, employment, labor, personal services,
45 or any other activity for which compensation is provided, expected, or
46 due, including but not limited to all activities conducted by business
47 entities.

 28.812. 1. It is unlawful for any business entity to employ,
2 recruit, hire for employment, or continue to employ an unauthorized
3 alien to perform work within the state of Missouri.

4 2. As a condition for the initial registration for any business
5 entity in the state of Missouri, all business entities shall, by sworn
6 affidavit and provision of documentation, affirm their enrollment and
7 active participation in the basic pilot program. Every business entity
8 shall also sign an affidavit affirming that it does not knowingly employ

9 any person who is an unauthorized alien.

10 3. As a condition of the periodic renewal of a business license or
11 registration, all employers registered or licensed within the state of
12 Missouri shall, by sworn affidavit and provision of documentation,
13 affirm their enrollment and active participation in the basic pilot
14 program.

15 4. As a condition for the award of any state contract or grant to
16 a business entity for which the value of employment, labor, or personal
17 services shall exceed ten thousand dollars, the business entity shall
18 provide documentation affirming its enrollment and participation in
19 the basic pilot program.

20 5. All state employers, state political subdivision employers, and
21 local government employers shall enroll and actively participate in the
22 basic pilot program.

23 6. An employer participating in the basic pilot program shall
24 verify the employment eligibility of every employee in the employer's
25 hire whose employment commences after the employer enrolls in the
26 basic pilot program.

27 7. Compensation, whether in money or in kind, provided to any
28 unauthorized alien shall not be allowed as a business expense
29 deduction from any income or business taxes of this state.

30 8. Any entity operating in this state in violation of sections
31 28.800 to 28.812, shall have its certificates of incorporation, or other
32 pertinent state business licenses or registrations, suspended after
33 written notice by the division of pending suspension and the tolling of
34 a ninety-day period, during which such entity shall have opportunity
35 to challenge the suspension or remedy the violation under section
36 28.815.

28.815. 1. The secretary of state shall enforce the requirements
2 of sections 28.800 to 28.812.

3 2. An enforcement action shall be initiated by means of a written,
4 signed complaint to the secretary of state's office submitted by any
5 state official, business entity, or state resident. A valid complaint shall
6 include an allegation which describes the alleged violator as well as the
7 actions constituting the violation, and the date and location where such
8 actions occurred.

9 3. A complaint which alleges a violation solely or primarily on

10 the basis of national origin, ethnicity, or race shall be deemed invalid
11 and shall not be enforced.

12 4. Upon receipt of a valid complaint, the division shall, within
13 ten business days, request identity information from the business entity
14 regarding any persons alleged to be unauthorized aliens. The division
15 shall suspend the business license of, and shall direct the applicable
16 municipal or county governing body to suspend any applicable license
17 of any business entity which fails, within ten business days after
18 receipt of the request, to provide such information.

19 5. The division, after receiving the requested identity
20 information from the business entity, shall submit identity data
21 required by the federal government to verify, under 8 U.S.C. 1373, the
22 immigration status of such persons, and shall provide the business
23 entity with written confirmation of that verification.

24 6. The secretary of state shall direct the applicable municipal or
25 county governing body to suspend the business permit and any
26 applicable licenses or exemptions of any business entity which fails to
27 correct a violation of sections 28.800 to 28.812, within ten business days
28 after notification of the violation by the secretary of state.

29 7. The correction of a violation with respect to the employment
30 of an unlawful worker shall include any of the following actions:

31 (1) The business entity terminates the unauthorized alien's
32 employment;

33 (2) The business entity, after acquiring additional information
34 from the employee, requests a secondary or additional verification by
35 the federal government of the employee's authorization, under the
36 procedures of the basic pilot program. While this verification is
37 pending, the ten business day period referenced in subsection 6 of this
38 section shall be tolled;

39 (3) The business entity attempts to terminate the unlawful
40 worker's employment and such termination is challenged in a court of
41 the state of Missouri. While the business entity pursues the termination
42 of the unauthorized alien's employment in such forum, the ten business
43 day period referenced in subsection 6 of this section shall be tolled.

44 8. The secretary of state shall not direct the applicable municipal
45 or county governing body to suspend the business permit or any
46 applicable license or exemptions of a business entity if, prior to the

47 date of the violation, the business entity had verified the work
48 authorization of the alleged unauthorized alien using the basic pilot
49 program.

50 9. The suspension of a business license or licenses under this
51 section shall terminate one business day after a legal representative of
52 the business entity submits, at an office designated by the secretary of
53 state, a sworn affidavit stating that the violation has ended.

54 (1) The affidavit shall include a description of the specific
55 measures and actions taken by the business entity to end the violation,
56 and shall include the name, address and other adequate identifying
57 information for any unauthorized aliens related to the complaint.

58 (2) Where two or more of the alleged unauthorized aliens were
59 verified to be unauthorized aliens, the legal representative of the
60 business entity shall submit to the secretary of state, in addition to the
61 prescribed affidavit, documentation acceptable to the secretary of state
62 which confirms that the business entity has enrolled in and is
63 participating in the basic pilot program.

64 10. For a second or subsequent violation, the secretary of state
65 shall direct the applicable municipal or county governing body to
66 suspend the business permit and any applicable license or exemptions
67 of the business entity for a period of ten days. After the end of the
68 suspension period, and upon receipt of the prescribed affidavit, the
69 secretary of state shall reinstate the business permit and any
70 applicable license or exemptions. The secretary of state shall forward
71 the affidavit, complaint, and associated documents to the Bureau of
72 Immigration and Customs Enforcement of the United States
73 Department of Homeland Security.

74 11. Any city or county governing body in the state of Missouri
75 that fails to comply with this section and directives from the secretary
76 of state regarding the failure of any business to enroll in the basic pilot
77 program, shall be ineligible for state funding.

78 12. Sections 28.800 to 28.817 shall not be construed to deny any
79 procedural mechanisms included in the basic pilot program.

80 13. Any business entity subject to a complaint and subsequent
81 enforcement under this section, or any employee of such a business
82 entity, may challenge the enforcement of this section with respect to
83 such entity or employee in the courts of the state of Missouri.

84 14. The determination of whether a worker is an unauthorized
85 alien shall be made by the federal government, under 8 U.S.C. 1373(c).
86 A determination of such status of an individual by the federal
87 government shall create a rebuttable presumption as to that
88 individual's status in any judicial proceedings brought under sections
89 28.800 to 28.815. The court may take judicial notice of any verification
90 of an individual's status previously provided by the federal government
91 and may request the federal government to provide automated or
92 testimonial verification under 8 U.S.C. 1373(c).

93 15. (1) A general contractor will not be held liable under this
94 section if:

95 (a) The general contractor verifies that all subcontractors and
96 independent contractors hired by the general contractor have enrolled
97 with the basic pilot program; and

98 (b) The general contractor reasonably believes that the
99 subcontractors and independent contractors hired by the general
100 contractor have complied with this section.

101 (2) If a general contractor fails to comply with either of the
102 provisions in subsection 1 of this section, he or she may be found liable
103 for all violations of any subcontractor or independent contractor under
104 the employ of the general contractor.

105 16. If the federal government notifies the division that it is
106 unable to verify whether an employee is authorized to work in the
107 United States, the division shall take no further action on the
108 complaint until a verification from the federal government concerning
109 the status of the individual is received. At no point shall any state
110 official attempt to make an independent determination of any alien's
111 legal status without verification from the federal government under the
112 8 U.S.C. 1373(c).

 28.817. 1. There is hereby established within the office of
2 secretary of state the "Division of Immigration Compliance".

3 2. The primary mission of the division is to:

4 (1) Enforce the provisions of sections 28.800 to 28.815;

5 (2) To communicate with the federal government to verify the
6 status of any alien under 8 U.S.C. 1373(c); and

7 (3) To compile an annual report documenting detailed
8 experience and general compliance with sections 28.800 to 28.815 to be

9 submitted with recommendations to the governor and the general
10 assembly no later than January first of each year.

11 3. Any rule or portion of a rule, as that term is defined in section
12 536.010, RSMo, that is created under the authority delegated in this
13 section shall become effective only if it complies with and is subject to
14 all of the provisions of chapter 536, RSMo, and, if applicable, section
15 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
16 and if any of the powers vested with the general assembly pursuant to
17 chapter 536, RSMo, to review, to delay the effective date, or to
18 disapprove and annul a rule are subsequently held unconstitutional,
19 then the grant of rulemaking authority and any rule proposed or
20 adopted after August 28, 2007, shall be invalid and void.

172.360. 1. All youths, resident of the state of Missouri, shall be admitted
2 to all the privileges and advantages of the various classes of all the departments
3 of the University of the State of Missouri[;], provided[,] that each applicant for
4 admission [therein] shall possess such scholastic attainments and mental and
5 moral qualifications as shall be prescribed in rules adopted and established by
6 the board of curators[; and provided further, that]. **However, aliens**
7 **unlawfully present in the United States shall not be eligible for**
8 **admission to the university.** The board of curators may charge and collect
9 reasonable tuition and other fees necessary for the maintenance and operation of
10 all departments of the university, as they may deem necessary.

11 2. **Prior to approval of any appropriations by the general**
12 **assembly for the University of Missouri, the registrar for each campus**
13 **of the University of Missouri shall annually certify to the education**
14 **appropriations committee of the house of representatives and the**
15 **appropriations committee of the senate that its campus has not**
16 **knowingly admitted any aliens unlawfully present in the United States**
17 **in the preceding year.**

174.130. 1. Each board may make such rules and regulations for the
2 admission of students as may be deemed proper. **However, aliens unlawfully**
3 **present in the United States shall not be eligible for admission to the**
4 **university or college.**

5 2. **Prior to approval of any appropriations by the general**
6 **assembly for the university or college, the registrar for each university**
7 **or college shall annually certify to the education appropriations**
8 **committee of the house of representatives and the appropriations**

9 **committee of the senate that its university or college has not knowingly**
10 **admitted any aliens unlawfully present in the United States in the**
11 **preceding year.**

175.025. 1. **The board of curators of Lincoln University may**
2 **make such rules and regulations for the admission of students as it may**
3 **be deemed proper; provided that aliens unlawfully present in the**
4 **United States shall not be eligible for admission to the university.**

5 **2. Prior to approval of any appropriations by the general**
6 **assembly for the university, the registrar shall annually certify to the**
7 **education appropriations committee of the house of representatives**
8 **and the appropriations committee of the senate that the university has**
9 **not knowingly admitted any aliens unlawfully present in the United**
10 **States in the preceding year.**

178.635. 1. The board of regents of Linn State Technical College shall
2 organize in the manner provided by law for the board of curators of the
3 University of Missouri. The powers, duties, authority, responsibilities, privileges,
4 immunities, liabilities and compensation of the board of Linn State Technical
5 College in regard to Linn State Technical College shall be the same as those
6 prescribed by statute for the board of curators of the University of Missouri in
7 regard to the University of Missouri, except that Linn State Technical College
8 shall be operated only as a state technical college. Nothing in this section shall
9 be construed to authorize Linn State Technical College to become a community
10 college or a university offering four-year or graduate degrees.

11 **2. All lawful bonded indebtedness incurred by the issuance of revenue**
12 **bonds, as defined in section 176.010, RSMo, by Linn Technical College, shall be**
13 **deemed to be an indebtedness of the board of regents of Linn State Technical**
14 **College after the date upon which the conditions of section 178.631 are met. Such**
15 **indebtedness shall be retired through tuition revenues.**

16 **3. The board of regents may make such rules and regulations for**
17 **the admission of students as it may be deemed proper. However, aliens**
18 **unlawfully present in the United States shall not be eligible for**
19 **admission to Linn State Technical College.**

20 **4. Prior to approval of any appropriations by the general**
21 **assembly for Linn State Technical College, the registrar shall annually**
22 **certify to the education appropriations committee of the house of**
23 **representatives and the appropriations committee of the senate that**

24 **the college has not knowingly admitted any aliens unlawfully present**
25 **in the United States in the preceding year.**

178.780. 1. Tax supported junior colleges formed prior to October 13,
2 1961, and those formed under the provisions of sections 178.770 to 178.890 shall
3 be under the supervision of the coordinating board for higher education.

4 2. The coordinating board for higher education shall:

5 (1) Establish the role of the two-year college in the state;

6 (2) Set up a survey form to be used for local surveys of need and potential
7 for two-year colleges; provide supervision in the conducting of surveys; require
8 that the results of the studies be used in reviewing applications for approval; and
9 establish and use the survey results to set up priorities;

10 (3) Require that the initiative to establish two-year colleges come from the
11 area to be served;

12 (4) Administer the state financial support program;

13 (5) Supervise the junior college districts formed under the provisions of
14 sections 178.770 to 178.890 and the junior colleges now in existence and formed
15 prior to October 13, 1961;

16 (6) Formulate and put into effect uniform policies as to budgeting, record
17 keeping, and student accounting;

18 (7) Establish uniform minimum entrance requirements and uniform
19 curricular offerings for all junior colleges **and ensure that aliens unlawfully**
20 **present in the United States are not eligible for admission to any junior**
21 **college;**

22 (8) Make a continuing study of junior college education in the state; and

23 (9) Be responsible for the accreditation of each junior college under its
24 supervision. Accreditation shall be conducted annually or as often as deemed
25 advisable and made in a manner consistent with rules and regulations
26 established and applied uniformly to all junior colleges in the state. Standards
27 for accreditation of junior colleges shall be formulated with due consideration
28 given to curriculum offerings and entrance requirements of the University of
29 Missouri.

178.786. **Prior to approval of any appropriations by the general**
2 **assembly for a junior college, the registrar for the college shall**
3 **annually certify to the education appropriations committee of the**
4 **house of representatives and the appropriations committee of the**
5 **senate that its junior college has not knowingly admitted any aliens**

6 **unlawfully present in the United States in the preceding year.**

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